

Anton Ewing  
3077 Clairemont Drive, Suite 372  
San Diego, California 92117  
Telephone: (619) 719-9640  
Facsimile: (760) 269-3107  
anton@antonewing.com

Pro per

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ANTON A. EWING,

Plaintiff,

vs.

PHILLIP A. FLORA (aka PHIL  
ANTHONY FLORA), EVERY DATA,  
INC., an unknown corporation, EVERY  
DATA, a fictitious business, FINANCE  
STORE, INC., a Nevada Corporation,  
DOES 1-100, ABC CORPORATIONS  
1-100, XYZ, LLC's 1-100.

Defendants.

CASE NO. 14-CV-2925-AJB-NLS

Hon. Anthony J. Battaglia

**PLAINTIFF'S RESPONSE TO  
DEFENDANT'S MOTION FOR  
SANCTIONS**

Complaint Filed: December 11, 2014

Hearing: April 21, 2016

Courtroom: 3B

Time: 2:00 p.m.

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1           Let's not forget where this case started. It started with Mr. Flora, a  
 2 convicted criminal, texting that he was going to send the **"Italian death squad**  
 3 **into [Ewing's] house"** and that he was going to **"send [Ewing] a package"** and  
 4 **"I'll trace his # [M]onday"** and then Flora called Ewing and stated he was going  
 5 "rape [Ewing's] daughter in front of [Ewing]." Finally Flora threatened to  
 6 "Folley" Ewing which, at the time, was meant to indicate that Flora would take a  
 7 knife and cut Ewing's head off like ISIS did to the late Mr. Folley. Flora is a sick  
 8 person and his psychological harassment of Ewing has been non-stop since before  
 9 this litigation began. Flora threatened, in writing, to kill Ewing. Further, Flora  
 10 threatened to sexually rape a little 9 year old girl and force the father to watch  
 11 while he did it. That is truly beyond sick. The FBI described Flora as a nutcase  
 12 with a few loose screws. *See also* SACV 11-00299 AG (JEMx) – Central District  
 13 of California. The FTC had to go after Flora not once, but twice and further, to  
 14 hold Flora in civil contempt and fine Flora over \$148,000 for the exact same  
 15 conduct that this lawsuit is suing him over. See: [https://www.ftc.gov/news-](https://www.ftc.gov/news-events/press-releases/2014/05/ftc-wins-default-contempt-judgments-against-text-spammer-phil)  
 16 [events/press-releases/2014/05/ftc-wins-default-contempt-judgments-against-text-](https://www.ftc.gov/news-events/press-releases/2014/05/ftc-wins-default-contempt-judgments-against-text-spammer-phil)  
 17 [spammer-phil](https://www.ftc.gov/news-events/press-releases/2014/05/ftc-wins-default-contempt-judgments-against-text-spammer-phil)

18           On November 11, 2014, at 9:01 p.m. Flora texted **"fuck you sue me lol"** and  
 19 then **"I've been sued many times."** That is who Flora is. And who represented  
 20 Flora in the FTC contempt action.... Bobby Babak<sup>1</sup> Samini, Esq. But Flora did not  
 21 just stop there. Flora went on to text **"you want war"** **"you got one"** **"but I don't**  
 22 **sue."** These are real threats. If this Court received these kinds of repeated text  
 23 messages late at night from Flora, it would seem like a clear and very real threat to  
 24 kill and rape.

25  
 26  
 27  
 28 <sup>1</sup> The State Bar of California forced Samini to put up two Bar directory web pages so as not to further mislead the public with his false name that he has no legal authority to use.

1 The actual evidence of the above is attached to this motion as exhibits,  
 2 including the text messages which Flora admitted to under oath and the contempt  
 3 citation from the Central District which the Court can take judicial notice of.

## 4 5 **PLAINTIFF’S MEMORANDUM OF POINTS AND AUTHORITIES**

### 6 7 **I. PLAINTIFF’S INTRODUCTION**

8 Defendant Flora has a history of engaging in threats and harassment of  
 9 opposing parties that can only be considered as vexatious. Flora is currently under  
 10 contempt of a federal judge in the Central District of California for engaging in  
 11 exactly the same kind of telemarketing conduct that this case is about. As such, it  
 12 is not surprising that these disturbing traits have been carried forward into the  
 13 present matter. The honorable district judge in the Central District imposed a  
 14 penalty of over \$148,000 on Flora for his contempt.  
 15

16  
 17 Consistent with his past acts of harassment, his actions in this case have been  
 18 consistently and undeniably improper. Accordingly, a sanction order is not  
 19 necessary to protect Defendant and his counsel.  
 20

21  
 22 “Rule 11 is intended to deter baseless filings in district court and imposes a  
 23 duty of reasonable inquiry so that anything filed with the court is well grounded in  
 24 fact, legally tenable, and not interposed for any improper purpose.” *Islamic Shura*  
 25 *Council of S. California v. F.B.I.*, 757 F.3d 870, 872 (9th Cir. 2014) (internal  
 26 quotation marks omitted). When Prado declares that Ewing violated a pending  
 27  
 28

1 order to not communicate with Mr. Flora, and that declaration is actually 100%  
 2 false, then Prado has violated Rule 11 that a matter be “well grounded in fact.”  
 3 Rule 11 authorizes sanctions when a party files a lawsuit or motion that is  
 4 frivolous, legally unreasonable, without factual foundation, or is otherwise brought  
 5 for an improper purpose. *Warren v. Guelker*, 29 F.3d 1386, 1388 (9th Cir. 1994).  
 6 It appears that Defendant Flora’s motion fits exactly within Rule 11’s view.  
 7

## 9 **II. FACTUAL BACKGROUND**

10 Defendant Phillip A. Flora’s (“Defendant” or “Flora”) motion should be  
 11 denied for the following reasons:

- 12 1. Flora uses descriptive words like “unprofessional, disrespectful,  
 13 threatening and harassing<sup>2</sup>” riddled throughout his motion. However,  
 14 when it comes down to actually backing up those descriptions, his  
 15 evidence fails miserably. There are indeed a lot of exhibits, but nothing  
 16 in the voluminous exhibits actually demonstrates any violation of any  
 17 court order or any local rule since the last hearing on this matter and  
 18 regarding this topic.
- 19 2. In paragraph two of Flora’s motion, he states that “Ewing continues to  
 20 harass, disparage, personally attack and threaten counsel” but then does  
 21 not actually show or demonstrate exactly how. Empty accusations.
- 22 3. In paragraph three of Flora’s motion, he states that “Ewing’s bad faith  
 23 conduct has prejudiced Flora’s ability to expeditiously bring this case for  
 24 trial.” This is a bizarre accusation in light of the fact that the Honorable  
 25 Magistrate Stormes entered a scheduling order on June 30, 2015 as ECF  
 26

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27  
 28 <sup>2</sup> See paragraph number 1 of ECF No. 57 on page 2 of 16.

No. 28. This order has never been amended, modified or changed in any manner whatsoever. Ewing has not slowed this case at all<sup>3</sup>. In fact, it is Flora that has missed his noticed deposition over and over again and it is Flora that has knowingly destroyed critical evidence (his cell phone) in this matter. And it is Flora who canceled Ewing's deposition twice with no advance notice and no excuse. This case has NOT been delayed by Ewing at all. And if anything, it has been Flora and only Flora that is playing the delay game. The reality is that there has been no delay in getting to trial as Prado argues in the motion.

Here is the scheduling order summarized – which has never changed:

- a. The parties must disclose the identity of their respective experts in writing by December 21, 2015.
- b. The date for the disclosure of the identity of rebuttal experts must be on or before January 25, 2016.
- c. On or before December 21, 2015, each party must comply with the disclosure provisions in Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure.
- d. Any party shall supplement its disclosure regarding contradictory or rebuttal evidence under Fed. R. Civ. P. 26(a)(2)(c) by January 25, 2016.
- e. All fact discovery shall be completed by all parties on or before November 20, 2015.
- f. All expert discovery shall be completed by all parties on or before February 22, 2016.
- g. A Mandatory Settlement Conference shall be conducted on May 9, 2016 at 2:30 p.m.
- h. All other dispositive motions including those addressing Daubert issues must be filed on or before March 28, 2016.
- i. Counsel shall comply with the pre-trial disclosure requirements of Fed. R. Civ. P. 26(a)(3) on or before July 1, 2016.

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<sup>3</sup> Ewing has actually attempted over and over again to move this case forward notwithstanding Flora's intentional failure to show up to two of his noticed depositions. Further, Flora canceled Ewing's deposition with less than 24 hours notice, twice, without providing any reason.

- j. The parties shall meet and confer on or before July 11, 2016 and prepare a proposed pretrial order. Objections to Pre-trial disclosures must be filed no later than July 18, 2016.
- k. The Proposed Final Pretrial Conference Order as described above must be prepared, served and lodged with the assigned district judge on or before July 25, 2016.
- l. The final Pretrial Conference is scheduled on the calendar of the Honorable Anthony J. Battaglia on August 1, 2016 at 1:30pm

At paragraph 17 of the scheduling order it states that none of the dates will be modified “except for good cause shown.” Flora has not asked for any modifications and thus has no good cause. Instead, Flora halls-off and files this instant motion for sanctions<sup>4</sup>. What is ironic is that Flora is the one who is actually engaging in frivolous and vexatious conduct, in violation of B&P §6128, by declaring to the Court, in his paragraph three of ECF No. 57 (page 2 of 16) that Ewing is prejudicing the ability to expeditiously bring the case for trial. Since Flora cites to no actual evidence to back up this fraudulent claim, Flora is the one that is engaging in criminal activity by engaging in “deceit upon the court” by falsely arguing that Ewing is delaying this case. Flora has the ability to respond to this above statement by March 8, 2016 in a rebuttal. Let’s see what Flora has to say. The facts are clear. Not one single scheduling order date has been moved or adjusted in any manner whatsoever. Flora argues, in writing before this Court, that

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<sup>4</sup> Flora did not even attempt a meet and confer prior to this filing. It appears that this filing is a dishonest and feable attempt to obfuscate about the real issue, which is Plaintiff’s pending motion regarding Flora’s perjury and destruction of evidence charges in this matter. Flora’s dirty tactics are not unnoticed.

1 Ewing has caused delay<sup>5</sup>. That statement by Flora's attorney is totally false.

2 When an attorney makes a false statement to a court, that is a crime under B&P  
3 §6128.  
4

5 4. On September 1, 2015 at 8:43 p.m., attorney Nicole C. Prado wrote an  
6 email to Plaintiff Ewing and she stated "govern yourself accordingly" as  
7 her closing statement. Talk about two faced! Prado used this term first,  
8 which was after she was ordered to act professionally by the Court, and  
9 now she turns around and argues that those exact same words used by  
10 Ewing in a subsequent email are a "threat" and warrant holding Ewing in  
11 civil contempt, as well as an immediate dismissal with prejudice and  
12 monetary sanctions on top of all of that? She must be kidding. That is  
13 absurd. It is dishonest and deceitful for Prado to say that Ewing's use of  
14 HER own words is a threat when puppeted right back to her<sup>6</sup>. In  
15 addition, on March 21, 2015, at 10:21 a.m. Prado sent an email to Ewing  
16 and her last statement was "conduct yourself accordingly". Perhaps Prado  
17 is taking issue with the word "govern" in place of her word "conduct." If  
18 these above declarations by Ewing about Prado are not true, then she will  
19 deny them in the rebuttable that is due by March 8, 2016. Let's see what  
20 Prado does. See ECF No. 57-23.

21 5. The fact that Prado moves this Court for civil contempt and terminating  
22 sanctions based on the use of the words "govern yourself accordingly" by  
23 Ewing when she is the one that used those words multiple times previous  
24 to Ewing's use thereof, is deceitful. How can Prado stand before this  
25 Court, as an officer of the court, and say that Ewing has "threatened" her  
26

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27 <sup>5</sup> Flora stated "prejudiced Flora's ability to expeditiously bring this case for trial."

28 <sup>6</sup> On what planet is "govern yourself accordingly" a threat?

1 by using the same words that she used before<sup>7</sup>? It is deceitful and deceit  
 2 is a crime when done by an attorney at law. This Court should find  
 3 Prado's conduct and declaration contemptuous. In Flora's paragraph ten,  
 4 he couches Ewing's "govern yourself accordingly" as "ominous warnings  
 5 to counsel." *Makes me want to puke. Seriously.* It is truly disgusting for  
 6 Prado to say that Ewing is making a threat when Ewing says "govern  
 7 yourself accordingly" when Prado is the one that began using that same  
 8 phrase over and over again before Ewing.

- 9 6. At paragraph four of Flora's motion (ECF No. 57 at page 2 of 16) he states  
 10 that "...Ewing directly contacted Flora" despite "...a pending Protective  
 11 Order." If that truly is the case, then this Court should hold Ewing in  
 12 contempt and the Court should forthwith dismiss this case with prejudice  
 13 and this Court should enter huge monetary sanctions against Ewing. But,  
 14 again, Prado is being deceitful to this Court. Prado has lied again. Prado  
 15 has made a false declaration to the Court. Ewing has not had any contact<sup>8</sup>  
 16 whatsoever with Flora, absent the actual deposition, since Ewing was  
 17 ordered to only not communicate about discovery and settlement matters.  
 18 Flora indicated that he is a "surfer" at the end of his deposition. The court  
 19 did not prohibit communication about surfing. See ECF No. 40  
 20 Notwithstanding, Ewing has not emailed, called or texted Flora ever since  
 21 the order, about any matters. For Flora to make this allegation in the first  
 22 instance is alarming to say the least. It is absolutely, unequivocally  
 23 fraudulent, unethical and dishonest for Prado to inflame the Court by  
 24

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25 <sup>7</sup> Prado has actually used the words "govern yourself accordingly," or very similar derivations, six times over the  
 26 past 14 months. For example, on 8/28/2015 at 11:17 a.m. Prado sent an email wherein she ended with "**govern your**  
 27 **conduct accordingly.**" It is just bizarre that Prado uses the words that she made up as if it is a threat when uttered  
 28 by the opposing party.

<sup>8</sup> Prado have filed over one hundred pages of exhibits and declarations. Not one single page is an email or a text  
 demonstrating communication directly with Mr. Flora after the date of the Magistrate's limited order thereon.



1 accusing Ewing of violating “a pending Protective Order” by “directly  
 2 contact[ing] Flora.” If Ewing contacted Flora about discovery or  
 3 settlement, then this Court should bring down the hammer on Ewing.  
 4 However, if Ewing did not do what Prado accuses him of, then this Court  
 5 should still bring down the hammer, only it should be on Prado, the  
 6 criminal deceitful liar. The fact is, Ewing has not contacted<sup>9</sup> Flora, just  
 7 like the Magistrate ordered. If there was any contact, then why wouldn’t  
 8 Prado include such an alleged communication as an evidentiary exhibit?  
 9 She did not, because none exists. Prado has lied to this Court.

10 7. In paragraph five of Flora’s motion he states that Ewing has filed  
 11 numerous bar complaints. That is correct; and the State Bar has in fact  
 12 taken action against attorney Samini. The Bar is a bit busy right now, but  
 13 eventually the Bar will get to the other complaints and hopefully sanction  
 14 Flora’s attorney for this unethical conduct. Ewing has the absolute right  
 15 to petition the government for grievances. Furthermore, there is nothing  
 16 wrong with meeting and conferring with opposing counsel prior to filing  
 17 a Bar complaint to see if Prado or Samini will turn back from their  
 18 obstructionism and chicanery in this matter. When they refuse, the Bar  
 19 takes jurisdiction over the matter. Hopefully Prado and Samini will cease  
 20 and desist from their unprofessional conduct. However, based on this  
 21 frivolous motion now before the Court, it does not appear to be so.

22 8. Flora’s paragraphs six, seven and eight are devoid of actual supporting  
 23 evidence. Furthermore, there is nothing wrong with informing an  
 24 opponent of causes of action that arise. For example, one staff attorney at  
 25 the Samini firm, Laura Booth, accidentally hit “reply all” and began to  
 26

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27  
 28 <sup>9</sup> The State Bar rules of professional conduct actually encourages parties to communicate directly to help settle matters and clear up the court’s busy docket. Flora is the one that is frustrating legit settlement.

slander, defame and disparage Ewing in her email<sup>10</sup> to co-counsel. Defamation of character is a civil cause of action. It would be strange indeed for a court to hold a pro se litigant in contempt for informing opposing counsel of causes of action that they have incurred liability over.

9. At page 4 of 16 of Flora's ECF No. 57 motion, he accuses Ewing of trying to "extort settlement" but then does not actually show or demonstrate a single instance of this. On page four, at lines 21 to 26, there is not one reference, footnote or citation of any kind to any email, document or other evidence to back up this outlandish claim. Could it actually be the case that Prado has lied yet again to the Court just like she lied about "directly contacting Flora" and stating that "govern yourself accordingly" is a threat or that this case is being delayed when no dates have changed since day one?

10. When this case first started, Flora filed a frivolous motion to dismiss and the Court schooled Flora's lawyers about knowingly making false assertions of well established law. On January 6, 2015, in Flora's ECF No. 3, the motion to dismiss, he used the following words which the Court found to be frivolous and denied Flora's motion:

"Defendant Flora states in his 12(b) motion that Plaintiff's complaint is:

- A. Unabashed (line 3, page 1)
- B. to harass and impugn (line 3, page 1)
- C. largely incomprehensible and incongruent (line 8, page 1)
- D. not colorable (line 10, page 1)

<sup>10</sup> --- [lbaskurt@SaminiLaw.com](mailto:lbaskurt@SaminiLaw.com) wrote:

From: Laura Baskurt <lbaskurt@SaminiLaw.com>  
To: "Anton A. Ewing, JD" <anton@antonewing.com>  
Subject: Re: Ewing v. Flora  
Date: Mon, 13 Jul 2015 19:23:28 +0000

Omg he is awful and he sounds like my ex husband

- E. so frivolously asserts (line 12, page 2)
- F. Inflammatory rhetoric, conclusory and defective (line 20, pg 1)
- G. futile (line 18, page 2)
- H. badly mistaken (line 8, page 3)
- I. poor attempt (line 14, page 3)
- J. woefully short (line 7, page 7)
- K. erroneously alleges (line 1, page 9)
- L. outrageous and inflammatory allegation (line 5, page 9)
- M. baldly asserts (line 7, page 9)
- N. fails to acknowledge (line 24, page 9)
- O. frivolous and unwarranted contentions (line 11, page 10)

Flora's lawyers have a habit of filing these kinds of grotesque motions. Here they go again with more and more filth and despicable descriptions. Flora, Samini and Prado were told by the Court to not engage in this kind of unsupported drafting in the future, but they just did it again.

11. In this latest motion for sanctions, Flora uses, 83 times, the following words, again unsupported and devoid of citation to real evidence:

- a. Unprofessional, disrespectful, threatening and harassing (line 11, page 2)
- b. Harass, disparage, attack, threaten (line 14, page 2)
- c. Bad faith, prejudice (line 15, page 2)
- d. Bullying, threatens (line 21, page 2)
- e. Gamesmanship (line 25, page 2)
- f. Mudslings (line 27, page 2)
- g. Provocative, ominous warnings (line 2, page 3)
- h. Vexatious pattern of harassment and bullying (line 5, page 4)
- i. Rife with threats (line 6, page 4)
- j. Extort (line 8, page 4)
- k. Deplorable threats, tactics of intimidation (line 9, page 4)

- 1 l. Abuse (line 13, page 4)
- 2 m. Brazen disrespect, contemptuous disregard (line 14, page 4)
- 3 n. Bad faith conduct (line 15, page 4)
- 4 o. Improper conduct (line 20, page 4)
- 5 p. Intimidate counsel, extort settlement (line 24, page 4)
- 6 q. Nefarious gamesmanship (line 25, page 4)
- 7 r. Bad faith (line 1, page 5)
- 8 s. Harassment (line 3, page 5)
- 9 t. Bullying, scheme to derail (line 9, page 5)
- 10 u. Egregiously (line 21, page 5)
- 11 v. Wrongfully influence (line 24, page 5)
- 12 w. Unfounded and inflammatory accusations (line 1, page 6)
- 13 x. Threatened judicial intervention (line 5, page 6)
- 14 y. Snarky manner (line 10, page 6)
- 15 z. Harassing emails (line 15, page 6)
- 16 aa. Unwarranted and unprofessional attacks (line 21, page 6)
- 17 bb. Most egregiously (line 23, page 6)
- 18 cc. Indirect threats (line 4, page 7)
- 19 dd. Threatened (line 6, page 7)
- 20 ee. Harassment (line 11, page 7)
- 21 ff. Threats of sanctions and various personal insults (line 16, page 7)
- 22 gg. Threats and psychological abuse (line 18, page 7)
- 23 hh. Fixation, disconcerting, sinister (line 20, page 7)
- 24 ii. Threatened (line 22, page 7)
- 25 jj. Warnings, personal insults, snarky rhetorical questions (line 4, pg8)
- 26 kk. Cutting remarks (line 5, page 8)
- 27 ll. Harassment (line 12, page 8)
- 28 mm. Taunting (line 24, page 8)

- 1 nn. Threatening (line 26, page 8)
- 2 oo. Threatened (line 27, page 8)
- 3 pp. Psychological abuse (line 4, page 9)
- 4 qq. Accusing, threatening (line 5, page 9)
- 5 rr. Govern herself accordingly (line 7, page 9)
- 6 ss. Singlehandedly thwarted (line 4, page 10)
- 7 tt. Bullied and harassed (line 11, page 10)
- 8 uu. Lack of professionalism (line 12, page 10)
- 9 vv. Harassment has escalated (line 13, page 10)
- 10 ww. Gamesmanship (line 15, page 10)
- 11 xx. Extortionist scheme (line 22, page 10)
- 12 yy. Frivolous motions (line 23, page 10)
- 13 zz. Improper discovery demands, threatens (line 4, page 11)
- 14 aaa. Egregious conduct (line 9, page 11)
- 15 bbb. Harass (line 11, page 11)
- 16 ccc. Frivolous claims (line 2, page 12)
- 17 ddd. Harassment, sham motions (line 5, page 12)
- 18 eee. Unleash personal attacks, vexatious threats (line 6, page 12)
- 19 fff. Outrageous allegations (line 7, page 12)
- 20 ggg. Nefarious gamesmanship (line 11, page 12)
- 21 hhh. Exploitation (line 12, page 12)
- 22 iii. Bad faith (line 15, page 12)
- 23 jjj. Threatened (line 17, page 12)
- 24 kkk. Fixated, obstruct (line 19, page 12)
- 25 ll. Mocked counsel (line 21, page 12)
- 26 mmm. Harass (line 24, page 12)
- 27 nnn. Riddled with insults (line 2, page 13)
- 28 ooo. Threat (line 13, page 13)

1	ppp. Personal attack, frivolous motion (line 14, page 13)
2	qqq. Egregious conduct (line 17, page 13)
3	rrr. Harass (line 19, page 13)
4	sss. Harass and intimidate (line 4, page 14)
5	ttt. Provocation (line 5, page 14)
6	uuu. Harassment (line 8, page 14)
7	vvv. Nefarious gamesmanship (line 22, page 14)
8	www. Tenuous claims (line 23, page 14)
9	xxx. Fixated on harassment (line 23, page 14)
10	yyy. Sham motions, false complaints (line 24, page 14)
11	zzz. Threatening (line 26, page 14)
12	aaaa. Flagrant disregard (line 28, page 14)
13	bbbb. Unrelenting harassment (line 1, page 15)
14	cccc. Brazen violations (line 18, page 15)

But not even once does Prado, Flora or Samini actually quote, demonstrate, show or cite to any evidence or proof of the above adjectives and adverbs<sup>11</sup>. It is rather suspect that this motion for sanctions was filed by Flora immediately after Ewing filed a motion to sanction Flora for destruction of evidence and perjury. ECF No. 56 for sanctions against Flora was filed by Ewing on February 10, 2016. ECF No. 57, the instant motion, was filed by Flora just two days later. Seems like there is a pink elephant in the room.

24 | **COURT'S ADMONITION**

<sup>11</sup> Unlike Flora, Ewing has never used any foul language in any communications with counsel. Further, Ewing has never, unlike Flora, threatened physical harm. It is telling that Prado never mentions anything about the actual substance of any of the Bar complaints. She does not want the Court to know how bad she had actually been. If she had a defense, should would defend herself. The reality is that the Bar complaints are in fact being process by the Bar and have not been closed out. Further, Samini did actually backdate a document. That is illegal. The Bar investigates illegal conduct by attorneys.

1 “Defense counsel should endeavor to ensure that future pleadings, moving  
 2 papers, and the citations contained therein, are correct and reflect current law.” See  
 3 ECF No. 20 at page 15. Samini and Prado were ordered by this Court to not do  
 4 what they just did. Prado engaged in the following direct violation of this Court’s  
 5 order:  
 6

7  
 8 A. Stating that Ewing contacted Flora when that is false.

9 B. Stating the Ewing threatened Prado with “govern yourself  
 10 accordingly” when she used said phrase six times previously.  
 11

12 C. Stating that Ewing has delayed this case when in fact no delay has  
 13 occurred and no change to the scheduling order has taken place.  
 14

15 The Court, in its Order at ECF No. 20 on March 25, 2015, required  
 16 defendant’s counsel “to ensure that their legal arguments are grounded in relevant  
 17 and controlling authority, and are not asserted for an improper purpose.” There,  
 18 defense counsel cited to *Jadwin*, but no other cases, as if *Jadwin* is the rule of law  
 19 in this District. Defense counsel’s moving papers were not “correct,” did not  
 20 “reflect current law,” and, again just like *Mims*, were not “grounded in relevant and  
 21 controlling authority;” rather the motion was in fact “asserted for an improper  
 22 purpose” which is to harass Plaintiff and cause unnecessary time and expense in  
 23 this matter.  
 24  
 25  
 26  
 27  
 28

1 It is rather interesting when you actually line up, side by side, Prado's  
 2 characterization of evidence with the actual evidence. Notice how Prado  
 3 completely twists the words around beyond the original meaning.  
 4

5 Prado's declaration, ECF No. 57-1, at paragraph five states:

6 "On October 12, 2015, Ewing sent a **harassing** email concerning his  
 7 deposition wherein he **demande**d I inform him of his depositions  
 8 questions prior to the deposition. Certainly, the purpose was none  
 9 other than to **harass** as Ewing openly **criticized** Flora's request to  
 10 depose Ewing. Attached to this Declaration as Exhibit "D" at page 1  
 11 is a true and correct copy of email correspondence from October 12,  
 2015."

12 Exhibit D states:

13 "Your client called my phone. I am suing him for doing that. I am not  
 14 sure what you could possibly ask me at my deposition that would be  
 15 relevant and discoverable. Please tell me you are not just going to  
 16 waste my time at the deposition. **I would like to know** what you think  
 17 you could possibly inquire about that is not protected and is relevant  
 18 to these actual causes of action. In other words, I did not do anything  
 19 in this case. So what could you possibly action me in a depo?"  
 Sent October 12, 2015 at 11:52 a.m.

20 Prado states that the above email was harassing, twice. Prado states  
 21 that Ewing "demande

22 d" to "inform him of his depositions questions prior to  
 23 the deposition." Nowhere is there a "demand" to know the deposition  
 24 questions before the deposition. "I would like to know" is not a demand. A  
 25 demand of that sort would go something like this: "I hereby demand that  
 26 you inform me in writing of each and every deposition question you intend  
 27  
 28



1 to ask me before you ask me.” That just sounds stupid. It is a deposition for  
 2 crying out loud.

3           What does the email actually say? It is a rhetorical question “so what  
 4 could you possible action me in a depo?” One has to look at the entire  
 5 paragraph and take it in context. The issue presented is that Ewing had  
 6 nothing to do with this case. Flora, or his designated agent, made an illegal  
 7 telemarketing call to Ewing. That is it. Case closed. This case is not  
 8 whether Flora is liable, it is only about how much Flora is going to pay as  
 9 outlined by various federal and state statutes governing the illegal calling of  
 10 protected numbers and the illegal recording of telemarketing calls without  
 11 notice. Nothing that Ewing says or could say can change the fact that Flora  
 12 illegally called Ewing and the fact that Flora then began a barrage of violent  
 13 and sickening text threats thereafter.

14           Defense counsel misconstrues the state bar complaint warnings. Plaintiff did  
 15 not “threaten” defense counsel. Rather, Plaintiff gave defense counsel the  
 16 opportunity to “do the right thing” and to be honest<sup>12</sup>. When defense counsel  
 17 refused to act professionally, Plaintiff actually in fact filed multiple State Bar  
 18 complaints. This was not a threat, it was a request to meet and confer regarding  
 19 defense counsel’s conduct. Those matters are now in the hands of the State Bar and  
 20 the State Bar will conduct its own investigations. This Court in fact sent a clear  
 21 message to defense counsel regarding the representation, as an attorney, of a defunct

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22  
 23  
 24  
 25  
 26  
 27  
 28 <sup>12</sup> Samini backdated an amended notice of deposition that he cancelled at the last minute.

1 corporation. This Court has also cautioned counsel about the same matter. It is  
 2 bizarre for counsel to now turn around and say that bringing his conduct to light  
 3 warrants a sanction order.

4 Finally, Sherri Watts is not an attorney at law and is not otherwise authorized  
 5 to sign a proof of service with a “/s/ Sherri Watts” and thus Flora has failed to serve  
 6 any of the documents, motions, notices and exhibits in this matter. The Court  
 7 should strike the entire filing by Flora as not properly before this Court. It would  
 8 be odd to require one party to comply with the Rules while allowing the other side  
 9 to just do as they please.

### 10 11 **III. PLAINTIFF’S ARGUMENT**

#### 12 **A. Sanction Motion Is Frivolous and Only Intended to Harass** 13 **Plaintiff.**

14 The moving party must demonstrate “good cause” for issuance of sanction  
 15 orders. (*Jepsen, Inc. v. Makita Elec. Works, Ltd.* (7th Cir. 1994) 30 F.3d 1206,  
 16 1210.) With no foul language and no violent threats to injure, the Defendant has  
 17 not demonstrated good cause to prohibit the parties from trying to talk about  
 18 settlement and dismissal of this case. Instead, Ewing’s confidential offers to settle  
 19 this case have now turned into “extortionate” settlement efforts.

20 83 times, not including Prado’s declaration itself, Flora has used various  
 21 vituperative words to describe Ewing that are unsupported by the evidence she  
 22 adduces. More importantly however; when it comes to legal analysis, the motion  
 23 is woefully inadequate. Just like Flora made a mistake with *Mims* and with *Jadwin*  
 24 in the prior motions, here to, Flora misses the legal boat. To begin, Flora misreads  
 25 *Yourish*. The *Yourish* court held “dismissal in this instance serves the public interest  
 26 in expeditious resolution of litigation as well as the court’s need to manage the  
 27 docket because **Plaintiffs’ noncompliance has caused the action to come to a**  
 28 **complete halt**, thereby allowing Plaintiffs to control the pace of the docket rather

1 than the Court." (*Yourish v. California Amplifier* (9th Cir. 1999) 191 F.3d 983, 990.)  
 2 *emphasis added*. In this matter, Ewing has not caused the action to come to a  
 3 complete halt. In fact, the case has not even slowed down. The dates are still as  
 4 they were originally set by the Magistrate. If anything, delay was solely caused by  
 5 Flora not showing up for two noticed depositions and again by Flora's attorneys  
 6 cancelling Ewing's deposition twice without even 24 hours notice. That is the only  
 7 possible or conceivable delay in this case. Devoid of real, true and actual delay,  
 8 Flora's motion completely misses the legal mark for sanctions of dismissal.  
 9 Moreover, it was Flora who refused to answer legitimate questions at his deposition  
 10 and thus forced Ewing to bring a motion to compel answers which the Magistrate  
 11 in fact granted. Flora has never brought a single motion to force Ewing to comply  
 12 with discovery in any manner whatsoever. Ewing timely, fully and completely  
 13 answered all questions propounded. Further, it is Flora that has knowingly and  
 14 intentionally destroyed evidence in this matter. It is Flora that has refused to turn  
 15 over documents. It is Flora that has refused to respond to discovery. It is Flora who  
 16 refused to bring any documents whatsoever to his noticed deposition. It is Flora  
 17 who has committed blatant perjury about his phone. This last item is now pending  
 18 before the Magistrate.

19 Finally, it is important to take into context the number of emails exchanged  
 20 back and forth between the parties. Since this case began, there has been an  
 21 exchange of 356 emails with counsel. Flora produced, in her dozen hours of  
 22 research on this matter the most "violent, threatening and harassing" of them all.  
 23 That number adds up to 25 which were attached as exhibits. That means that there  
 24 were 331 emails that were not "violent, threatening or harassing".  
 25

#### 26 **IV. CONCLUSION**

27 For the reasons stated herein, Plaintiff respectfully requests that this motion  
 28 for sanctions be denied and that that Court again caution Flora regarding the filing

1 of frivolous motions that are not supported by facts or current law. Furthermore,  
2 the Court is respectfully requested to refer Prado and Samini to the State Bar of  
3 California for the false and deceitful declarations they made in this motion.

4  
5 Dated: March 1, 2016

By: /S/ Anton Ewing  
Anton Ewing, Pro per Plaintiff

**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 ) SS:  
 COUNTY OF SAN DIEGO )

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 3077 Clairemont Drive #372, San Diego, CA 92117. On March 1, 2016, I served the within **PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SANCTIONS**, on the interested parties in said action by placing \_\_\_ the original   X   a true copy thereof, enclosed in a sealed envelope and addressed as follows:

**BABAK SAMINI, ESQ**

Samini Scheinberg PC  
 840 Newport Center Drive,  
 Suite 700  
 Newport Beach, California 92660

  X   BY UNITED STATES MAIL, I am "readily familiar" with the practice of collection and processing correspondence for mailing. Under that practice, it would be deposited in a box or other facility regularly maintained by the United States Postal Service with First-Class postage thereon fully prepaid that same day at Newport Beach, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

  X   BY ELECTRONIC SERVICE VIA CM/ECF, I also hereby certify that I filed the foregoing document with the Clerk of the Court for the United States District Court, Southern District of California by using the Central District CM/ECF System. Participants in the case who are registered CM/ECF users will be served by the USDC-Southern District of California CM/ECF system.

  X   State - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: March 1, 2016

\_\_\_\_\_  
 Collette Stark, Registered Process Server